

REMARKS

Applicants have carefully reviewed the Examiner's outstanding Office Action. In responding thereto, the required terminal disclaimers relative to Patent Nos. 6,393,130 and 6,584,207 were previously filed on June 18, 2004 along with Amendment A. If not in file, another copy will be provided. Claims 127 - 132 have been canceled so as to advance prosecution of the present application. New Claims 133 - 141, directed to species II have been added hereby. As explained below, the application is in condition for allowance.

The examiner's rejections of claims 21-27, 29, 32-34, 104-110, 112, 115-117 based on anticipation by Aebi et al. US Patent 5,530,763 are defective in that they do not comply with the standards imposed relative to anticipation rejections. Anticipation requires that each limitation of the allegedly anticipated claim be found in exactly the same way, as claimed, in the structure of the anticipating document.

In Aebi et al., see Fig. 1 thereof, the diaphragm 2 is attached at each end to exterior end element 3 and interior end element 4. The elements 3, 4 are joined together by a somewhat deformable connecting element 5.

The connecting element 5 is not attached to the diaphragm 2 prior to insertion of the molding material which is injected via the port 34. Subsequent to insertion of the molding material, again injected by the port 34, the connecting element 5 is attached to the end members 3, 4 as well as adjacent cured (and hardened) molding material. It is still not attached to the diaphragm 2.

Both claims 21 and claim 104 require:

"at least one spine which extends axially along an interior surface of the skin and is attached thereto sufficiently so as to provide insertion rigidity when the skin is inserted into the user's ear canal" (independent claims 21, 104)

Thus, the fact that in the structure of Aebi et al. the diaphragm 2 is not attached to the connecting element 5 means that it cannot anticipate claims 21-27, 29, 32-34, 104-110, 112 and 115-117 as argued by the Examiner.

The obviousness rejection of claims 28, 30, 31, 111, 113 and 114 in view of Aebi et al.

are also defective. Aebi et al. includes no suggestion, teaching or motivation which would cause one of ordinary skill in the art to modify the structure therein so as to make obvious any of claims 28, 30, 31, 111, 113 and 114. Silence does not provide the appropriate suggestion, motivation or teaching.

For at least the above reasons the pending claims are allowable. Newly added species II claims 133 - 141 are also allowable. As made clear by Aebi et al. the shaped member 1 becomes a hard, rigid structure when the plastic material injected via port 34 cures:

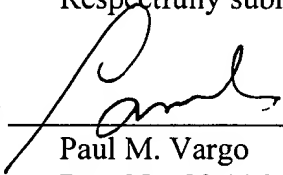
"The molding chamber between the diaphragm and the skeleton is filled by a suitable plastics material through the molding channel 34, the hearing aid being positioned in the auditory canal. The plastic hardens to the individualized shaped member 1." (Col. 4, lns 58-62, USPN 5,530,763)

Hence, Aebi, et al. is quite unlike the structure of any of claims 133 - 141. Allowance of the application is respectfully requested.

Respectfully submitted,

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